PART IV

Section 2C--(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE.

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT, (LABOUR).

Labour Dispute :—Industiral Dispute between the Workmen and the Management of M/s. Maruthy Lorry Transport, Belur, Hassan District.

Award of the Labour Court, Bangalore—published.

Read the following papers :—

1. Letter No. 950-960/66-67, dated 10th November 1966, from Shri P. T. Kadkol Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated 9th November 1966.

Present

Sri P. T. KADKOL, B.Sc., LL-B., ... Presiding Officer.

Reference No. 38 of 1965.

Between

Workmen represented by the President, The Mysore State Plantation and General Labour Union, Chikmagalur ... *I Party.*

and

The Management of M/s. Maruthi Lorry Transport, Belur, Hassan District. ... *II Party.*

Reference:

(Government Order No. PLM 398 LLD 65, dated 5th August 1965.)

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. Maruthi Lorry Transport, Belur, Hassan District, have referred it for adjudication to this court under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. PLM 398 LLD 65 dated 5th August 1966, setting out the following points of dispute for adjudication:

> "Whether Sri Rajoo and Sri M. S. Lingappa, the Proprietors of Maruthi Lorry Transport, Belur P. O. Hassan District, are justified in refusing work to Sri Sheik Mohideen, from 1st August 1964? If not is Sri Sheik Mohideen entitled to reinstatement with back wages and continuity of service from that date or any other relief if any?

2. The cause of the aggrieved workman, Sheik Mohideen. has been sponsored by the Mysore State Plantation and General Workers' Union, Chickmagalur, which is a registered Trade Union, This Union, as representing the workmen, is the first party and the Management of Maruthi Lorry Transport, Belur, is the Second party, in this proceeding. Dr. E. Pushpam, the President of the Union has appeared on behalf of the First Party. Mr. Rajoo has appeared in person, for the Management, as the Union did not consent to his being represented by an advocate.

3. The Union has submitted its statement of claims. It has not set out any of the relevant facts therein. It has only demanded the reinstatement of the workman together with a sum of Rs. 4, 870 by way of arrears of pay, notice pay, bonus, leave salary and compensation for wrongful termination.

4. The Management has submitted one statement of objections dated 14th December 1965, and an additional statement of objections dated 28th March 1966. Both of them have been signed and verified by Mr. Rajoo. The contentions raised by Mr. Rajoo in them are these:—

M. S. Lingappa, mentioned in the order of reference has nothing to do with the Maruthi Lorry Transport, which is the second party; he (Rajoo) is the sole owner and proprietor of the said Transport Service; this Transport service is not an industry

and the present dispute is not an industrial dispute, under the Industrial Disputes Act; the aggrieved workman was never the member of the Union; hence the Union has no right to sponsor his cause and proceed with this dispute on his behalf; the aggrieved workman was employed by the second party; but it is not true to say that the Management of the second party refused him work; the aggrieved workman abandoned the service of his own accord and stayed away from work voluntarily; he has even settled his accounts with the Management; the present demands made by him and the first party union on his behalf are false and untenable; hence this reference deserves to be rejected, etc.,

5. On the basis of these pleadings and the statement of their respective cases made before me by Dr. Pushpam and Mr. Rajoo,I have set down the following issues (*Vide* Order Sheet dated 28th April 1966) for hearing:—

1. Is Mr. M. S. Lingappa a partner or a joint owner in the Second Party Concern?

2. Do the activities of the Second Party Concern amount to an Industry as defined in Section 2 (j) of the Industrial Disputes Act, 1947?

3. Is the referred dispute an industrial dispute within the meaning of Section 2 (k) of the Industrial Disputes Act?

4. Is Sheik Mohideen a member of the First Party Union?

5. Does the First Party prove that service were refused to the agrieved workman Sheik Mohideen by the Second Party with effect from 1st August 1964?

6. Does the Second Party prove that the aforesaid workman abstained from his services voluntarily?

7. Is the claims of backwages barred by the principles of *res judicata* in view of the decision under the Payment of Wages Act ?

8. To what relief or reliefs is the aggrieved workman entitled ?

Parties were directed to lead evidence with respect to all these issues and they have done so. The Union has examined two witnesses. namely the aggrieved workman Shiek Mohideen

(W.W.1) and Dr. Pushpam (W.W.2) and produced four documents Exts. W,1 to W.4. Mr. Rajoo (M.W.1) has examined himself on behalf of the Management and produced one document marked Ex. M. 1. This is all the evidence in the case.

6. In the Order of reference made by the Government, two persons, namely Mr. M. S. Lingappa and Mr. Rajoo, have been mentioned as the proprietors of the Maruthi Transport Service, which is the second party. The contention of Mr. Rajoo is that Mr. M. S. Lingappa has nothing to do and has no interest in the Second Party Transport Service. This contention is the subject matter of first issue. It appears that M. S. Lingappa and Rajoo are cousins, though according to Shiek Mohideen they are full brothers, but with respect to which he has not led any satisfactory evidence: The story given out by Shiek Mohideen is, that Maruthi Transport Service was in existence from before 1951, with Lingappa and Rajoo as owners; he joined service therein in 1951; the Management then owned two goods lorries, with two drivers (one of them being himself) and two conductors; in 1955 Lingappa and Rajoo sold both the goods lorrier and purchased two military lorries; in 1959, Rajoo and Lingappa sold both the military lorries and purchased one Tata-Mercedes Benz Lorry bearing Registration No. MYH 3132 and he was driving it, etc., This is what he has stated in this examination-in-chief. In the cross-examination, however, he has admitted that lorry No. MYH 3132 had been purchased in the name of Rajoo alone; Rajoo and Lingappa divided some time between 1955 and 1959 and that it was after Rajoo and Lingappa divided that Rajoo purchased Lorry No. MYH 3132. These admissions made by Sheik Mohideen clearly show that Lingappa was neither a partner nor a joint owner of the Lorry No. MYH 3132. It may be that before as well as after 1959, the Second Party Concern was being run under the name and style, the Maruthi Transport Service. It may also be that before 1959, Lingappa and Rajoo were either partners or joint proprietors of the concern. But from 1959 onwards Rajoo alone is the sole owner or proprietor of the concern as admitted by Sheikh Mobideen himself. At the date of Reference, therefore, Rajoo alone was the proprietor of the concern and Lingappa had nothing to do with it. Hence, I record my finding on the first issue in the negative.

7. It is admitted that Rajoo, runs his goods lorry on hire on a Public Carrier permit. His lorry is open to engagement by any person who is prepared to hire it and pay the hire

amount. From the hire amount so realised, he meets the running expenses including the salary or wages of the drivers and conductors, and keeps the balance for him himself. According to the definition given in Section 2 (j) "Industry" means any business, trade, undertaking or calling of the employer and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The activities of the Second Party Transport service, as mentioned above, clearly fall within the definition of an "Industry" which is wide enough to include such business or trade. Hence I hold that the activities of the Second Party amount to "Industry" and record my finding on the Second Issue in the affirmative.

8. Dr. Pushpam, who is the President of the First Party Union has sworn that Sheik Mohidden is member of the Union and he is supported by the Membership Register Ex. W. 4. There is no evidence to the contrary. Hence I record my finding on the 4th issue in the affirmative.

9. The next question is, whether, this dispute is an Industrial Dispute. A dispute between an individual workman and the Management can become an industrial dispute, either if the cause of the aggrieved workman, is supported by a substantial or considerable section of the employees under the same employer or is sponsored by the Union of the employees under the employer. It can also become an industrial dispute if the cause of the aggrieved workman is sponsored by a general union, if a considerable section of the workmen under the same employer are members of such general union and such member-workmen support the cause of the aggrieved w rkman, If a dispute is to become an industrial dispute on the ground of its having been sponsored by a union then it must be shown that the aggrieved workman was a manber of such Union, prior to the accrual of the cause of action. his is the position in Law as propounded by various High Courts as well as the Supreme Court.

10. Now coming to the case on hand, it is admitted that the First Party Union is not the Union, exclusively of the workmen employed by Rajoo. It is a general Union, the membership of which is open to the Plantation Labourers as well as ganeral labourers. This means that any person, working in any establishment can become the member of the first party union. That such is the case, can be seen from the membership register at Ex. W. 4 and the testimony of Dr. Pushpam.

11. Then the evidence on record shows that Rajoo employed two drivers and two conductors, whenever he was running two goods lorries and only one driver and one conductor, whenever, he was running one goods lorry. Rajoo has produced the "Pay Register" at Ex. M. 1. It is for the period commencing from 5-12-1959 and ending on 30-1-1965. It shows that the number of employees engaged by Rajoo has not exceeded four, during the above period. In June and July 1964, the mumber of employees was only four, they being two drivers (including Sheik Mohidden) and two conductors. Dr. Pushpam has given the names of these four employees as Sheik Mohideen (Aggrievd workman). Ismail (Conductor), Syed Ahmed (Driver) and Moorty (Conductor). Then after referring to the membership Register Ex. W. 4, he has stated that out of these four persons, mentioned above, only one was the member of the Union, he being the aggrieved workman Sheik Mohideen. When the other three employees under Rajoo were not members of the First Party Union, they could not possibly support the cause of Sheik Mohideen, through the first party Union. It, therefore, follows that merely because the first party Union, which is a general union, has sponsored the cause of the aggrieved workman Sheik Mohideen, this dispute cannot be considered to be an Industrial dispute.

12. Dr. Pushpam has then stated that the aggrieved workman Sheik Mohideen gave him the written complaint Ex. W. 1 on 28th September 1964 and on receiving it, he called the meeting of the Executive Committee of the Union and in that meeting, a resolution was passed as per Ex. W. 2, sponsoring his (Sheik Mohidden's) cause and authorising him (Dr. Pushpam) to take the necessary action. Then he has stated that he took up the matter with the conciliation officer; the Second Party did not appear before that officer; and hence the Conciliation failed. This statement was made by him on 28th July 1966. As Rajoo demanded some documents in the custody of the Union, his cross-examination was adjourned to 5th October 1966. On that day Dr. Pushpam has produced another document marked Ex. W. 3. It has been received by him (as per date put by him thereon) on 5th August 1964. It is an application addressed to the Union and has been signed by nine persons. It is a complaint lodged with the Union by the nine applicants who have signed on it, regarding the alleged termination of the services of Sheik Mohideen. All the nine applicants have said therein that they were the workmen under the Second Party and were members of the Union and have

requested the Union to take suitable steps against the illegal termination of the services of Sheik Mohideen. If these nine applicants were really in the service of the second party at the material time, and were members of the Union, then it could be said that the cause of Sheik Mohideen had been supported by a substantial section of the workmen under the Second Party and hence this dispute is an industrial dispute. But Dr. Pushpam himself has stated in paragraph 7 of his deposition as under :—

> "I produce the complaint received by me on 5th August 1964 from some workmen of the second party. It is Ex. W. 3. This is signed by nine workers. These nine workmen were not the members of our Union in 1964, and particularly on 5th August 1964. They became members of our Union in 1965. All the Nine workmen who have signed on Ex. W. 3 were working under the Second Party."

Then in paragraph 8, Dr. Pushpam has stated :—

> "When the services of Sheik Mohideen were terminated on 1st August 1964, none of the workmen of the second party were members of our Union. All of them became members after the aggrieved workman was dismissed."

13. If the position was as stated by Dr. Pushpam, then the recital made by the applicants in Ex. W. 3, that they were members of the Union on the daie of this application, cannot be true. The Union could not, therefore, act on the application Ex. W. 3. In fact, it has not acted upon it. It has acted only on the complaint, Ex. W. 1, given by Sheik Mohideen on 28th September 1964.

14. Then it may also be seen that the nine applicants under Ex. W. 3 are not proved to have been in the employ of the second party at the material time when Sheik Mohideen's services are alleged to have been terminated. Rajoo has sworn in paragraph 4 of his deposition:—

> "The names of the nine persons who have signed below Ex. W. 3 are now read over to me. None of them was in my employ in July and August 1964. Except Ismail, the remaining eight persons were never in my service, at any time"

In this statement made by him, Rajoo is fully supported by the "Pay Register", Ex. M. 1, which does not contain the names of

eight of the signatories to Ex. W. 3. The testimony of Sheik Mohideen only shows that some of the persons who have signed below Ex. W. 3 were working under the second party before 1959 and that they had left their service before then (*Vide* para 13 of his deposition). In these circumstances, it cannot be said that the nine persons who have signed below Ex. W. 3 were in the employ of the second party at the material time. Hence their supporting the cause of Sheik Mohideen cannot make the present dispute, an industrial dispute.

15. According to the First Party Union, the aggrieved workman Shaik Mohideen was refused service with effect from 1st August 1964. Was he member of the Union on that day ? On this point, Dr. Pushpam has stated in paragraph 6 :—

> "From the membership Register, all that I can say is that Shaik Mohideen was a member of our Union in 1964. I can not say from the Register whether he became a member of our Union before 1st August 1964 or after 1st August 1964".

Shaik Mohideen has not produced any receipts for paying the membership fees of the Union. Dr. Pushpam has not been able to produce the counter-foils of the receipts issued to members, inspite of search. Shaik Mohideen has stated that he was paying Rs. 12 per year as membership fees of the Union (*Vide* para 23), But from Ex. W 4, we find that the membership fees are only annas eight per month. In these circumstances, it can not be concluded with any degree of certainty that Shaik Mohideen was a member of the Union on or before 1st August 1964, when his services are alleged to have been terminated. On this ground too, it has to be concluded that the present dispute is not proved to be an industrial dispute. I have considered the issue from all aspects and find that the present dispute is not an industrial dispute. Hence I record my finding on the third issue in the negatiye.

16. In view of this conclusion reached by me on the third issue, it is really unnecessary to record findings on the other issue, Even then I proceed to consider them, since parties have been allowed to lead evidence with respect to them.

17. The question arising for decision is whether the Management of the Second Party refused work to Sheik Mohideen or Sheik Mohideen stayed away from work of his own accord. In Ex. W. 3, the nine persons who have signed on it have stated that

Sheik Mohideen's services have been terminated by the second party illegally from 1st August 1964. This application is dated 5th August 1964. In the resolution passed by the Executive Committee of the First Party Union, it has been stated that his services were illegally terminated on 1st August 1964. In the order of reference also, the same date has been given as the date on which he was refused work. But in the complaint given by Sheik Mohideen (Ex. W. 1) on 28th September 1964, he has stated that he was refused work from 16th August 1964. Dr. Pushpam has stated that on receiving the complaint Ex. W 1 given by Sheik Mohideen he called the meeting of the executive committee of the Union and the resolution at Ex. W 2 was passed. The complaint Ex. W 1 is dated 28th September 1964, whereas the resolution Ex. W. 2 is passed on 8th August 1964. Obviously therefore the resolution at Ex. W. 2 can not have been passed on the basis of Ex. W. 1, which is of a much later date. In all probability the resolution at Ex.W. 2 has been passed on the basis of Ex.W.3. dated 5th August 1964. But in the resolution Ex.W.2, it has been stated that the application of Sheik Mohideen was considered at the emergency meeting. But Ex. W. 3 does not appear to have been signed by Sheik Mohideen. The three documents at Ex. W. 1, to W. 3 are very much in conflict with one another and a serious doubt arises regarding their genuineness. Then coming to the Payment Register Ex.M. 1, we find that Sheik Mohideen's name does not appear therein as an employee from 1st August 1964. His pay ending on 31st July 1964 has been received by his brother Ameer on that very day. Sheik Mohideen has admitted the signaturs of his brother Ameer for receiving the salary on 31st July 1964 and it is marked Ex. M 1-A. Sheik Mohideen has admitted that his brother Ameer received his salary for July 1964 and paid it to himself. If Sheik Mohideen was in service on 1st August 1964 and proceeded on a leave of 15 days from 2nd August 1964 and work was refused to him by Rajoo on 16th August 1964, as now stated by him in his depcsition and as made out by him in his complaint Ex. W. 1, then there was no reason for his brother Ameer receiving his salary for July 1964 on 31st July 1964. He would have received his salary himself on that day. So it is clear from Ex. M.1 and the admission made Sheik Mohideen, that he was not in service from before 1st August 1964 or at least from 1st August 1964. His present statement that work was refused to him from 16th August 1964 cannot be true. On the other hand, Rajoo has sworn that Sheik Mohideen worked under him till 16th July 1964 and there after left off coming to work when he (Rajoo) questioned him (Sheik Mohideen) about

a stepney. Beyond the word of Sheik Mohideen there is no evidence to show that Rajoo refused him work either on 1st August 1964 or on 16th August 1964. The other available evidence shows that he left off the service, voluntarily, for reasons best known to himself. This is my conclusion on the evidence available in the case. Hence I record my finding on the fifth issue in the negative and on the sixth issue in the affirmative.

18. In view of these findings, the seventh issue does not survive.

19. Since this is not proved to be an industrial dispute and since it has not been proved that the Management refused work to Sheik Mohideen, I hold that he is not entitled to any of the reliefs claimed by him.

20. In the result, I make the following award :—

AWARD

Reference is rejected. The Demands made by the aggrieved workman Sheik Mohideen and the First Party Union on his behalf are also rejected. Parties do bear their own costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore

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P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

APPENDIX

List of witnesses examined in this case on behalf of First Party:

W.W. 1 Sri Sheik Mohideen
2 Dr. E. Pushpam

Second Party:

M.W. 1 Sri Rajoo

List of documents admitted in this case on behalf of First Party:

Ex.W. 1 Copy of Complaint
2 Copy of Resolution
3 Application of nine persons
4 Membership Register

Second Party:

Ex. M. 1 Pay Register

P. T. KADKOL

Presiding Officer,
Labour Court, Bangalore.